raised by any party, and not only to the claims of States. Pet. App. 10-11.

The court also rejected the CNMI's claim that Section 801 of the Covenant vested the CNMI with the oceanic submerged lands at issue. Pet. App. 12-14. The court noted that, when Congress transfers submerged lands to States and territories, it uses precise language directly referring to such lands. *Id.* at 13. The court concluded that Section 801's reference to transferring title to "real property in the Northern Mariana Islands" was not sufficiently clear to defeat the United States' paramount rights to offshore areas. *Id.* at 13-14.

The court accordingly held that "the United States acquired paramount interest in the seaward submerged lands," that the CNMI's contrary laws "are inconsistent with the paramountcy doctrine," and that the district court's judgment should be affirmed. Pet. App. 19.

ARGUMENT

The court of appeals correctly ruled that the United States has acquired and retained paramountcy over the submerged lands seaward of the CNMI's coastline and that federal law preempts the CNMI's legislative attempts to assert jurisdiction over those lands. That decision does not conflict with any decision of this Court or of any other court of appeals. Further review is not warranted.

1. Petitioner is mistaken in asserting (Pet. 9-14) that the court of appeals failed to follow this Court's paramountcy decisions. Those decisions establish that the United States controls oceanic submerged lands as a function of its national sovereignty. As the Court stated in *Texas*, *supra*, "once low-water mark is passed the international domain is reached. Property rights must then be so subordinated to political rights as in substance to coalesce and unite in the national sovereign." 339 U.S. at 719.

The Court explained in *Texas* that the Republic of Texas was a sovereign entity before it sought admission to the Union. As a separate republic, Texas claimed sovereignty and ownership rights extending a distance of three marine leagues from its coastline. 339 U.S. at 713. The situation changed, however, when Texas joined the United States:

> The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. In external affairs the United States became the sole and exclusive spokesman for the Nation. We hold that as an incident to the transfer of that sovereignty any claim that Texas may have had to the marginal sea was relinquished to the United States.

Id. at 718. Similarly, when the United States became sovereign over the NMI in 1986 through the creation of the commonwealth, any claim that the CNMI had to the marginal sea was relinquished. See *Maine*, 420 U.S. at 522 (federal government has paramount rights in the marginal sea as an attribute of its external sovereign powers "[w]hatever interest the States might have had immediately prior to statehood").

The United States and the NMI shared that understanding of the connection between sovereignty and rights to oceanic submerged lands at the time that they entered into the Covenant. The section-by-section analysis of the Covenant, prepared by the Marianas Political Status Commission, states that the sovereignty conferred by Section 101 of the Covenant would not differ from the sovereignty that the United States enjoys over States and over other United States territories:

> The United States will have sovereignty, that is, ultimate political authority, with respect to the Northern Mariana Islands. The United States has sovereignty with respect to every state, every territory and the Commonwealth of Puerto Rico. United States sovereignty is an

> essential element of a close and enduring political relationship with the United States, whether in the form of statehood, in the traditional territorial form, or as a commonwealth.

C.A. E.R. 1062.[1] As that analysis further notes, "[t]he commonwealth relationship embodied in the Covenant is patterned after the relationship between the United States and Puerto Rico as well as the relationship between the United States and the Territory of Guam." *Id.* at 1060.[2]

The CNMI Constitution and its official analysis, adopted soon after the Covenant, correspondingly recognize that the CNMI, like the States and other territories, shall have no rights in offshore submerged lands unless and until the United States transfers such lands to the CNMI. See pp. 3-4, *supra*. The court of appeals accordingly had no reason to depart from familiar and well-established priniciples. It cor-

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[1] The lower courts have treated the section-by-section analysis as an "authoritative" guide to the meaning of the Covenant provisions. See Pet. App. 16; *A & E Pac. Constr. Co.* v. *Saipan Stevedore Co.*, 888 F.2d 68, 71 n.4 (9th Cir. 1989); *Fleming* v. *Department of Pub. Safety*, 837 F.2d 401, 408 (9th Cir.), cert. denied, 488 U.S. 889 (1988); see also *Northern Mariana Islands* v. *Atalig* 723 F.2d 682, 686 n.8 (9th Cir.), cert. denied, 467 U.S. 1244 (1984).

[2] The Solicitor of the Department of the Interior determined in 1958 that this Court's paramountcy cases apply to submerged lands offshore of the Territory of Guam. See *Rights of Abutting Upland Property Owners to Claim Title to Reclaimed Land Produced by Filling on Tidelands and Submerged Lands Adjacent to the Territory of Guam*, 65 Interior Dec. 193 (1958) (C.A. E.R. 1669, 1671-1674). In accordance with that conclusion, Congress has conveyed to Guam submerged lands within three miles of its coastline. See Territorial Submerged Lands Act, Pub. L. No. 93-435, 88 Stat. 1210 (48 U.S.C. 1705). Congress has also granted the Commonwealth of Puerto Rico ownership rights in submerged lands seaward of its coastline. See 48 U.S.C. 749. Congress has not taken any similar action with respect to the CNMI.

rectly concluded that, when the United States obtained sovereignty over the CNMI, the United States also obtained paramountcy over its offshore areas as a normal incident of the transfer of sovereignty. See Pet. App. 9-11, 16-17.[3]

There is no basis for the CNMI's assertion (Pet. 12) that the Covenant conveys oceanic submerged lands to the CNMI. Section 801 of the Covenant (Pet. App. 88-89) notes that the CNMI's new government would acquire the "real property" previously owned by the Trust Territory government. Section 801, however, makes no reference to submerged lands. As the court of appeals recognized, when Congress has approved the transfer of offshore submerged lands to States or territories, it has used specific language expressly referring to such lands. Pet. App. 13. Section 801 accordingly is insufficient to divest the United States of title to the submerged lands at issue here. See *United States* v. *Texas*, 339 U.S. at 717 ("Dominion over navigable waters and property in the soil under them are so identified with the sovereign power of government that a presumption against their separation from sovereignty must be indulged.") (quoting *United States* v. *Oregon*, 295 U.S. 1, 14 (1935)). See Pet. App. 12-17.

2. The CNMI is also mistaken in contending (Pet. 10-12, 14-17) that the lower courts erred by failing to construe the Covenant under principles applicable to Indian treaties. The

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[3] Article V of the Covenant, entitled "Applicability of Laws," supports that conclusion. Pet. App. 85-88. Section 502(a)(2) of that Article provides that the laws of the United States that are in existence on January 9, 1978, and that "are applicable to Guam and which are of general application to the several States," will apply to the CNMI "as they are applicable to the several States," unless otherwise provided in the Covenant. *Id.* at 86. Section 502(a) accordingly confirms that the paramountcy doctrine applies to the CNMI, just as it applies to Guam and to the various States.

CNMI acknowledges (Pet. 10) that "[t]he indigenous people of the Commonwealth—the Chamorro and Carolinian people—are not a recognized Indian tribe." It nevertheless asserts (Pet. 11) that the Covenant should be construed as if it were an Indian treaty because "the people of the Commonwealth were in a similar conquered state during the negotiations, as many Indian tribes were." Petitioner cites no precedent, however, that supports extending the Indian treaty canons of construction to the Covenant or to other such agreements that govern the United States' relations with its territories.

The CNMI's proposed extension is unwarranted because there is no basis for treating the Covenant as if it were an Indian treaty. The United States did not "conquer" the people of the NMI. After the defeat of Japan, the United Nations designated the United States to be the administering authority of the Trust Territory, and the Trusteeship Agreement provided that the United States shall "promote the development of the inhabitants of the trust territory toward self-government." Trusteeship Agreement for the Former Japanese Mandated Islands, July 18, 1947, Art. 6(1), 61 Stat. 3302. See *People of Saipan* v. *United States Dep't of Interior*, 502 F.2d 90, 95 (9th Cir. 1974), cert. denied, 420 U.S. 1003 (1975). That process culminated in the Covenant, which was "a sovereign act of self-determination" by the people of the NMI. Pet. App. 10 n.6 (quoting Covenant preamble, Pub. L. No. 94-241, 90 Stat. 264).

The people of the NMI freely determined that their future relationship with the United States would involve a commonwealth form of government under which all aspects of external sovereignty would be ceded to the United States. The NMI could have chosen a different political relationship with the United States, such as "free association," which other Trust Territory districts adopted. Under that form of associ-

ation, the NMI would have obtained rights to offshore submerged lands, but at the price of losing advantages of coming under the external sovereignty of the United States. As the court of appeals recognized, the "trust principles" that the CNMI urges have no application in this context. Pet. App. 10 n.6.[4]

Moreover, the cases that the CNMI cites for the proposition that courts resolve ambiguities in treaties with Indians in their favor have not involved offshore lands and waters. As the Ninth Circuit recognized in *Native Village of Eyak* v. *Trawler Diane Marie, Inc.*, *supra*, federal paramountcy principles preclude claims by Indians to lands underlying the ocean. See 154 F.3d at 1095. For that reason as well, there would be no basis for applying principles governing the construction of Indian treaties to find an implicit conveyance of oceanic submerged lands in this case. See *Inupiat Cmty. of Arctic Slope* v. *United States*, 548 F. Supp. 182, 187 (D. Alaska 1982) (applying federal paramountcy to reject claims of Alaska Natives to the outer continental shelf), aff'd, 746 F.2d 570 (9th Cir. 1984), cert. denied, 474 U.S. 820 (1985).

3. Contrary to the CNMI's suggestion (Pet. 17-18), there is no reason to believe that the court of appeals' decision will

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[4] The CNMI's reliance (Pet. 11) on a statement made by Representative Burton, floor manager for the joint resolution, is misplaced. He entered his remark about resolving ambiguities in favor of the people and government of NMI into the Congressional Record on March 18, 1976, after final House consideration and approval, on March 11, 1976, of Senate amendments to the House Joint Resolution. See 122 Cong. Rec. 6147-6149, 7272-7273 (1976). A floor manager's statements about a bill cannot be accorded weight when, as here, they were not made available to Congress before it took action on the bill. *National Ass'n of Greeting Card Publishers* v. *United States Postal Serv.*, 462 U.S. 810, 833 (1983); see generally *Texas Indus., Inc.* v. *Radcliff Materials, Inc.*; 451 U.S. 630, 644 n.17 (1981) ("Courts, of course, should be wary of relying on the remarks of a single legislator.").

adversely affect the CNMI's residents by restricting access to fishing or other traditional ocean-based pursuits, or that it will have a negative impact on cultural identity. The decision does not prevent use of the oceanic resources; it merely recognizes that the United States has paramount authority over the offshore areas unless and until Congress acts to give the CNMI control over those areas. The CNMI, which asserts a claim of sovereignty to offshore areas within 200 miles of its coastline, has resisted the United States' overtures to provide it with the same measure of ownership that the States and other territories enjoy—title to a three-mile limit. See Pet. App. 48; see, *e.g.*, Submerged Lands Act, 43 U.S.C. 1301 *et seq.* In light of that history, the CNMI's claim of unfair treatment is unpersuasive.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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FEBRUARY 2006